[Cite as *Lewis v. Gravely*, 2016-Ohio-1502.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

BRYAN LEWIS ON BEHALF OF: J.D.L.,	:	
Petitioner-Appellee,	:	Case No. 14CA990
vs.	:	
CHARLES GRAVELY, JR.,	:	DECISION AND JUDGMENT ENTRY
Respondent-Appellant.	:	

APPEARANCES:

Richard E. Wolfson,[1] Portsmouth, Ohio, for appellant

Barbara A. Moore, West Union, Ohio, for appellee

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-28-16
ABELE, J.

{¶ 1} This is an appeal from an Adams County Common Pleas Court judgment that granted a domestic violence civil protection order (CPO) to Bryan D. Lewis, on behalf of eleven-year-old J.D.L., petitioner below and appellee herein.

{¶ 2} Charles Gravely, Jr., respondent below and appellant herein, raises the following assignments of error:

FIRST ASSIGNMENT OF ERROR:

[1] Appellant's counsel entered his notice of appearance on April 9, 2014, one day after the April 8, 2014 CPO hearing.

"THE TRIAL COURT ERRED AS A MATTER OF LAW ALLOWING BRYAN LEWIS TO FILE A PETITION FOR A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER ON BEHALF OF [J.D.L.]."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED PLAIN ERROR BY GRANTING CUSTODY IN A CIVIL PROTECTION ORDER WHEN A CUSTODY PROCEEDING WAS PENDING IN THE JUVENILE COURT."

THIRD ASSIGNMENT OF ERROR:

"THE FINDING OF 'IMMINENT, SERIOUS PHYSICAL HARM' WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE."

FOURTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION AND

VIOLATED RESPONDENT'S RIGHT OF DUE PROCESS."

{¶ 3} On April 1, 2014, Bryan D. Lewis, on behalf of his minor grandchild, J.D.L., filed a R.C. 3113.31 petition for a domestic violence CPO against appellant, the child's step-father. The petition alleged that the child "had a gun pulled on him, he had bruises on his back from abuse, [and] living conditions were dirty." The trial court issued an ex parte CPO and set the matter for a full hearing.

{¶ 4} On April 8, 2014, the trial court held a full hearing to consider the CPO petition.[2] At the hearing, the child testified that approximately two to three weeks earlier, appellant called the

[2] It appears the grandfather improperly acted as counsel for the child. See In re D.L., 189 Ohio App.3d 154, 2010-Ohio-1888, 937 N.E.2d 1042 (6th Dist.), ¶14 (stating that "[a] person's inherent right to proceed pro se in any court pertains only to that person and does not extend to the person's spouse, child, or solely owned corporation" and holding that children's fathers should not have been permitted to cross-examine witnesses or act as counsel for children). None of the parties, however, raised any objection before the trial court, and the issue is not specifically raised as error on appeal.

child into appellant's room, placed a scope on a gun, loaded the gun, and then stated, "let's see how fast you can run," while aiming the gun at the child. The child ran from the room. The child stated that the event "really scared" him and that he was afraid that appellant would hurt him. The child explained that appellant has pointed a gun at him on past occasions, but the current event was the first time appellant ever loaded the gun in the child's presence.

{¶ 5} At the conclusion of the hearing, the trial court granted the petition. The court found that the child is in danger of, or has been a victim of, domestic violence committed by appellant. The court ordered, inter alia, that appellant stay at least 500 feet away from the child and temporarily allocated parental rights and responsibilities to the child's grandparents.[3]

{¶ 6} On April 10, 2014, appellant filed a motion for relief from judgment. Appellant also filed a separate motion that requested the trial court to enter Civ.R. 52 findings of fact and conclusions of law. On May 7, 2014, appellant filed a notice of appeal.

{¶ 7} On January 20, 2015, this court remanded the matter to the trial court with instructions to enter findings of fact and conclusions of law in accordance with appellant's request and stayed the appellate proceedings pending the trial court's decision.

{¶ 8} On May 27, 2015, the trial court entered findings of fact and conclusions of law. The court credited the child's testimony and found that appellant pointed a gun at the child while stating, "let's see how fast you can run." The court determined that the child lived as a member of appellant's household at the time of the incident and that the grandfather could seek a CPO on the child's behalf. The court also found that appellant placed the child in fear of imminent serious

[3] The trial court's April 8, 2014 protection order appears to contain conflicting expiration dates. The first page states that the order is effective until April 8, 2015. The last page states that the order shall remain in full force and effect until April 8, 2019. Obviously, this is a result of a clerical error.

physical harm.

{¶ 9} On June 5, 2015, this court returned the matter to its active docket and we now consider appellant's appeal.

I

{¶ 10} For ease of analysis, we have combined appellant's first, second, and fourth assignments of error.[4]

{¶ 11} In his first assignment of error, appellant asserts that the trial court erred as a matter of law by granting the petition. Specifically, appellant contends that the court wrongly concluded that the child's grandfather could bring the petition on the child's behalf. Appellant claims that R.C. 3113.31 permits a "family or household" member to seek relief, and that the child's grandfather is not a "family or household member." Appellant further asserts that Civ.R. 17(B) did not permit the grandfather to pursue the CPO on the child's behalf.

{¶ 12} In his second assignment of error, appellant argues that the trial court plainly erred by granting a CPO and allocating temporary custody to the grandparents when a custody proceeding was pending in the juvenile court.

{¶ 13} In his fourth assignment of error, appellant asserts that the trial court "abused its discretion" and violated his due process rights in the following respects: (1) "issuance of the ex parte Order April 01, with service April 06, followed by a hearing on April 08, 2014, denying time

[4] Appellant attaches various documents to his appellate brief. However, appellate review of trial court proceedings is limited to the record before the trial court. Materials submitted directly to an appellate court cannot be added to the record on appeal. Morgan v. Eads, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157, ¶13 (stating that "a bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial"). We may not, therefore, consider any document attached to appellant's brief if they were not before the trial court when it ruled on the CPO.

to object under Civ.R. 53;" (2) "the court's inquiry of an allegation not contained in the petition;" (3) "presence and inquiry of a Children Services caseworker and prosecuting attorney, not under oath or subject to cross-examination;" and (4) "questions to Respondent in the presence of those persons."

{¶ 14} We initially note that appellant did not raise any of these arguments during the trial court's CPO proceedings. Instead, the first time appellant mentioned any of the issues was in his Civ.R. 60(B) motion for relief for judgment. It is a rule of appellate procedure that "an appellate court will not consider any error which could have been brought to the trial court's attention, and hence avoided or otherwise corrected." Schade v. Carnegie Body Co., 70 Ohio St.2d 207, 210, 436 N.E.2d 1001 (1982); accord State v. Quarterman, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶15. Thus, a party thus forfeits, and may not raise on appeal, any error that arises during trial court proceedings if that party fails to bring the error to the court's attention, by objection or otherwise, at a time when the trial court could avoid or correct the error. Goldfuss v. Davidson, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997); Stores Realty Co. v. City of Cleveland Bd. of Bldg. Standards and Bldg. Appeals, 41 Ohio St.2d 41, 43, 322 N.E.2d 629 (1975).

{¶ 15} In the case at bar, appellant did not bring any of the foregoing issues to the trial court's attention before the court entered the CPO. Thus, he failed to raise the issues at a time when the court could have avoided or corrected any alleged errors. Consequently, appellant forfeited the right to raise the arguments in this direct appeal from the court's judgment granting the CPO.

{¶ 16} However, appellate courts have discretion to consider forfeited errors under the plain error doctrine. Hill v. Urbana, 79 Ohio St.3d 130, 133-34, 679 N.E.2d 1109 (1997), citing In re M.D., 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus (stating that "[e]ven where [forfeiture] is clear, [appellate] court[s] reserve[] the right to consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it'"); State v. Pyles, 7th Dist. Mahoning No. 13-MA-22, 2015-Ohio-5594, ¶82, quoting State v. Jones, 7th Dist. No. 06-MA-109, 2008–Ohio–1541, ¶65 (explaining that the plain error doctrine "'is a wholly discretionary doctrine'"); DeVan v. Cuyahoga Cty. Bd. of Revision, 8th Dist. Cuyahoga No. 102945, 2015-Ohio-4279, ¶9 (noting that appellate court retains discretion to consider forfeited argument); see Risner v. Ohio Dept. of Nat. Resources, Ohio Div. of Wildlife, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 27 (stating that reviewing court has discretion to review forfeited constitutional challenges). For the plain error doctrine to apply, the party claiming error must establish (1) that "'an error, i.e., a deviation from a legal rule'" occurred, (2) that the error was "'an "obvious" defect in the trial proceedings,'" and (3) that this obvious error affected substantial rights, i.e., the error "'must have affected the outcome of the trial.'" State v. Rogers, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶22, quoting State v. Barnes, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002); Schade v. Carnegie Body Co., 70 Ohio St.2d 207, 209, 436 N.E.2d 1001, 1003 (1982) ("A 'plain error' is obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in judicial proceedings.").

{¶ 17} The plain error doctrine is not, however, readily invoked in civil cases. Instead, an appellate court "must proceed with the utmost caution" when applying the plain error doctrine in

civil cases. Goldfuss v. Davidson, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). The Ohio Supreme Court has set a "very high standard" for invoking the plain error doctrine in a civil case. Perez v. Falls Financial, Inc., 87 Ohio St.3d 371, 721 N.E.2d 47 (2000). Thus, "the doctrine is sharply limited to the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." Goldfuss, 79 Ohio St.3d at 122 (emphasis sic); accord Gable v. Gates Mills, 103 Ohio St.3d 449, 2004–Ohio–5719, 816 N.E.2d 1049, ¶43. "The plain error doctrine should never be applied to reverse a civil judgment simply * * * to allow litigation of issues which could easily have been raised and determined [during the trial court proceedings]." Goldfuss v. Davidson, 79 Ohio St.3d 116, 122, 1997-Ohio-401, 679 N.E.2d 1099, 1104 (1997). Accordingly, appellate courts "'should be hesitant to decide [forfeited errors] for the reason that justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.'" Risner at ¶28, quoting Sizemore v. Smith, 6 Ohio St.3d 330, 332, 453 N.E.2d 632 (1983), fn. 2; accord Mark v. Mellott Mfg. Co., Inc., 106 Ohio App.3d 571, 589, 666 N.E.2d 631 (4th Dist. 1995) ("Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the trial court process.").

{¶ 18} In the case sub judice, appellant did not show that any of the alleged errors to which he failed to object during the trial court's CPO proceedings warrant the application of the plain error doctrine. Appellant did not show that any of the alleged errors seriously affected the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process. Consequently, we do not believe that the case at bar is one of

those extremely rare cases involving exceptional circumstances to which the plain error doctrine applies. See generally Office of Consumers' Counsel v. Pub. Utilities Commission, 67 Ohio St.2d 153, 159, 423 N.E.2d 820, 824 (1981) (noting that failure to raise standing issue subject to forfeiture); In re Banks, 4th Dist. Scioto No. 07CA3192, 2008-Ohio-2339, ¶7 (stating that party may not raise standing issue for first time on appeal); Hoyt v. Heindell, 191 Ohio App.3d 373, 2010-Ohio-6058, 946 N.E.2d 258 (11th Dist.), ¶27 (refusing to recognize as plain error domestic relation court's allocation of parental rights in CPO proceeding, even though juvenile court proceeding pending, due to party's failure to object).

{¶ 19} Within his fourth assignment of error, appellant raises two issues not subject to forfeiture. Appellant asserts that the trial court "abused its discretion" and violated his due process rights by failing "to act on requests for findings of fact/conclusions of law and a request for relief." However, we point out that we remanded this matter to the trial court to enter findings of fact and conclusions of law. Thus, this argument is moot.

{¶ 20} To the extent appellant challenges the trial court's failure to rule on his Civ.R. 60(B) motion for relief for judgment, it is well-established that "an appeal divests trial courts of jurisdiction to consider Civ.R. 60(B) motions for relief from judgment." Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc., 70 Ohio St.3d 141, 147, 637 N.E.2d 890 (1994). "Jurisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion." Id. Thus, once appellant filed his notice of appeal, the trial court no longer possessed jurisdiction to consider appellant's Civ.R. 60(B) motion. Appellant did not request that we remand this matter to the trial court so that it may consider his Civ.R. 60(B) motion. His argument that the court erred by failing to rule

on that motion is, therefore, devoid of merit.

{¶ 21} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first, second, and fourth assignments of error.

II

{¶ 22} In his third assignment of error, appellant asserts that the evidence fails to support the court's finding that the child was in danger of imminent serious physical harm. Appellant argues that the child's placement with his grandparents remedied any danger that may have existed.[5] Appellant thus contends that when the court granted the CPO, the child no longer faced any danger of imminent serious physical harm.

{¶ 23} Generally, an appellate court will uphold a trial court's decision to grant a CPO as long as the manifest weight of the evidence supports a finding that the petitioner "has shown by a preponderance of the evidence that petitioner or petitioner's family or household members are in danger of domestic violence." Felton v. Felton, 79 Ohio St.3d 34, 679 N.E.2d 672 (1997), paragraph two of the syllabus; Birkhimer v. Dean, 4th Dist. Pike No. 03CA720, 2004–Ohio–2996, ¶11; Walters v. Walters, 150 Ohio App.3d 287, 2002–Ohio–6455, 780 N.E.2d 1032 (4th Dist.), ¶9; Gooderham v. Patterson, Gallia App. No. 99CA01 (Nov. 9, 1999). When an appellate court reviews whether a trial court's decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [fact-finder] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed * * *."'"

[5] Although not properly before this court, we observe that appellant attached a copy of a "safety plan," dated March 16, 2014, to his appellate brief. Appellant alleges that pursuant to the safety plan, he agreed to place the child with the grandparents.

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶20 (clarifying that the same manifest-weight standard applies in civil and criminal cases), quoting Tewarson v. Simon, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001); State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A reviewing court may find a trial court's decision against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" Thompkins, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting Martin, 20 Ohio App.3d at 175, 485 N.E.2d 717; accord State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000). Moreover, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder's credibility determinations. Eastley at ¶21. As the Eastley court explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *
>
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id., quoting Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶ 24} Additionally, as this court previously explained in State v. Murphy, 4th Dist. No. 07CA2953, 2008–Ohio–1744, 2008 WL 1061793, ¶31:

> "It is the trier of fact's role to determine what evidence is the most credible and convincing. The fact finder is charged with the duty of choosing between two competing versions of events, both of which are plausible and have some factual support. Our role is simply to insure the decision is based upon reason and fact. We do not second guess a decision that has some basis in these two factors, even if we might see matters differently."

{¶ 25} R.C. 3113.31 permits a trial court to issue a civil protection order "to bring about

the cessation of domestic violence." R.C. 3113.31(E)(1). The statute "'provides the victim of domestic violence the ability to seek immediate relief through a civil protection order, which enjoins the respondent from further violence against the family or household member.'" Fleckner v. Fleckner, 177 Ohio App.3d 706, 2006–Ohio–4000, ¶14 (10th Dist.), quoting Parrish v. Parrish, 95 Ohio St.3d 1201, 1204, 765 N.E.2d 359 (2002) (Lundberg Stratton, J., dissenting).

{¶ 26} Domestic violence includes acts that place "another person by the threat of force in fear of imminent serious physical harm." R.C. 3113.31(A)(1)(b). "Force" is defined as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). "Serious physical harm" is defined as any of the following:

> (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
> (b) Any physical harm that carries a substantial risk of death;
> (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
> (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
> (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

R.C. 2901.01(A)(5).

{¶ 27} "Imminent" means "'ready to take place,' 'near at hand,' 'impending,' 'hanging threateningly over one's head,' or 'menacingly near.'" State v. Tackett, 4th Dist. Jackson No. 04CA12, 2005–Ohio–1437, ¶14, quoting Strong v. Bauman, 2nd Dist. Montgomery No. 17256, 1999 WL 317432, *4 (May 21, 1999). "'Imminent' does not mean that 'the offender carry out the threat immediately or be in the process of carrying it out.'" Henry v. Henry, 4th Dist. Ross No. 04CA2781, 2005–Ohio–67, ¶19, quoting Strong. Rather, the critical inquiry is "'whether a reasonable person would be placed in fear of imminent (in the sense of unconditional,

non-contingent), serious physical harm * * *.'" Henry at ¶19, quoting Strong; accord M.H. v. J.H., 9th Dist. Medina No. 15CA0031-M, 2015-Ohio-5178, ¶7.

{¶ 28} "'[B]oth the totality of the circumstances, as well as the victim's state of mind, are relevant to the determination that the threat of harm was imminent.'" M.H. at ¶7, quoting Chafin v. Chafin, 9th Dist. Lorain No. 09CA009721, 2010-Ohio-3939, ¶22; accord Tackett at ¶15. Accordingly, a domestic violence victim's subjective belief that serious physical harm was imminent constitutes evidence of imminence. Tackett at ¶15. Moreover, a victim's actions following the incident may also help establish that the victim believed that serious physical harm was imminent. Id. (stating that "the fact that the victim went to the police may serve as evidence that demonstrates the victim's belief that physical harm was imminent").

{¶ 29} In the case at bar, we do not believe that this is one of those extremely rare cases in which the evidence weighs heavily against the trial court's decision. Instead, ample evidence supports the trial court's finding that appellant placed the child "by the threat of force in fear of imminent serious physical harm." Appellant pointed a loaded weapon at the child and stated, "let's see how fast you can run." Appellant's action of pointing a loaded weapon, coupled with his statement to the child, show that he threatened the use of force against the child. The child stated that he was "really scared" and worried that appellant would harm him. Appellant's conduct caused the child to run from the room, further evidencing the child's fear that he would be harmed. Intentionally pointing a loaded weapon at a child places that child in imminent danger of serious physical harm. Thus, based upon the totality of the circumstances, we do not believe that the trial court committed a manifest miscarriage of justice by finding that appellant placed the child in fear of imminent serious physical harm.

{¶ 30} Appellant nevertheless asserts that the evidence does not support a finding that the child was in imminent danger. He alleges that when the grandfather filed the complaint, the child was no longer living in appellant's household and, thus, any imminent danger that previously existed had been eliminated. We note, however, that the relevant time frame for examining whether the respondent caused another to fear imminent serious physical harm is the time frame alleged in the petition. Weber v. Forinash, 6th Dist. Sandusky No. S-14-034, 2015-Ohio-3187, ¶18, quoting Gannon v. Gannon, 6th Dist. Wood No. WD–07–078, 2008–Ohio–4484, ¶38 (finding imminence established even though parties had not lived together for over two months and noting that "the acts which instill fear of imminent harm need not happen on the same day as the petition," but instead, "the acts must give rise to a fear that is 'present on the day alleged, irrespective of when the acts precipitating the fear occurred'"). Civil protection orders are intended to prevent violence before it happens. Strong, supra; Weber, citing Young v. Young, 2d Dist. Greene No. 2005–CA–19, 2006–Ohio–978, ¶105. Imminence does not, therefore, require an offender to be in the process of carrying out a threat of force at the time the court considers the petition. Weber, citing Young v. Young, 2d Dist. Greene No. 2005–CA–19, 2006–Ohio–978, ¶105; accord Henry, supra. "If that were the case, a man could threaten to kill his wife at some time in the near future; so long as the threat was couched in terms of a time span of more than a few minutes, the man would not be subject to a Civil Protection Order." Strong at *4. Moreover, R.C. 3113.31(B) specifies that a "petitioner's right to relief under this section is not affected by the petitioner's leaving the residence or household to avoid further domestic violence."

{¶ 31} In the case sub judice, the petition alleged that on March 16, 2014, appellant placed the child in imminent danger. Thus, the events that occurred around that date may be used to

establish that appellant placed the child in fear of imminent serious physical harm and that the issuance of a civil protection order to prevent future violence was warranted. The child's right to relief was not affected by leaving appellant's household to live with his grandparents. R.C. 3113.31(B) Moreover, simply because appellant was not in the process of carrying out a threat on April 8, 2014–the date that the court considered the petition–does not mean that the court was unable to issue the CPO. Strong; Weber. Consequently, we reject appellant's argument that the evidence fails to support the court's finding that the child was in fear of imminent serious physical harm. We see nothing in the record that would lead us to believe that the trial court committed a manifest miscarriage of justice by granting the CPO.

{¶ 32} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's third assignment of error.

III

{¶ 33} Although not raised as an assignment of error, appellant further claims that the trial court violated his constitutional rights. Appellant asserts: "Restrictions to Respondent's rights under the CPO are impermissible." Appellant does not, however, specify what rights he alleges the court violated. In addition to failing to specify precisely how the court violated his constitutional rights, appellant did not raise this alleged constitutional violation as an assignment of error, but rather, seems to have simply included it to his appellate brief. Under these circumstances, we decline to address it. See App.R. 12(A)(1)(b) (stating that the appellate court shall decide the merits of the appeal on the basis of "assignments of error set forth in the briefs under App.R. 16)."

{¶ 34} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's

assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, J.: Concurs in Judgment & Opinion
McFarland, J.: Concurs in Judgment Only

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.